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March 29, 2017

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Telrite Corporation d/b/a Life Wireless *Ex Parte* Presentation;
WC Docket Nos. 11-42**

Telrite Corporation d/b/a Life Wireless (Telrite), by its attorneys, submits this letter in response to TracFone Wireless, Inc.'s (TracFone's) reply comments in response to the Commission's February 16, 2017 public notice seeking comment on TracFone's January 18, 2017 request for clarification.¹

TracFone's strident tone and willful ignorance of the facts and the law doesn't make its case compelling. In fact, it lays bare TracFone's true purpose: using the regulatory process *once again* to try to shield itself from competition and competitors that have out-innovated and out-competed them.² This latest request follows the pattern of seeking to curb innovation in a manner that would harm consumers while favoring TracFone's own business model.³ As a result, TracFone misses the

¹ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Reply Comments of TracFone Wireless, Inc. (filed Mar. 9, 2017) (TracFone Reply); *Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, WC Docket No. 11-42 (rel. Feb. 16, 2017); Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017).

² TracFone has often resorted to questionable behavior to advance its interests. Underscoring this point is the fact that Telrite just this week had to send TracFone a letter demanding that TracFone cease and desist from falsely advertising "Life Wireless Phones" and infringing on Telrite's Life Wireless mark.

³ This isn't the first time that TracFone has sought to suppress competition through the regulatory process. For example, TracFone has repeatedly asked the Commission to prohibit the most effective means of reaching low-income consumers—in-person enrollment and handset distribution and commission-based agents—in favor of TracFone's own preferred Internet-based enrollment

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key issue: whether mobile BIAS can be provided to Lifeline subscribers using technologies that leverage unlicensed spectrum in the same way it is provided to non-Lifeline subscribers or whether Lifeline subscribers will be relegated to a limited selection of cookie-cutter cellular data products. TracFone, it appears, would rather the Lifeline program be shunted to licensed, cellular services with limited data plans than to compete fairly in the market and permit consumer choice and innovation. Fortunately, neither the laws, nor the facts, nor sound public policy support TracFone's view.

First, TracFone deliberately attempts to confuse the Commission by improperly conflating its handset and Premium Wi-Fi arguments.⁴ The issues raised by TracFone—whether the Lifeline Modernization Order⁵ requires smartphones as the only means of accessing mobile BIAS and whether mobile BIAS is limited to cellular data services—are distinct issues. With respect to devices, the facts are clear. All Telrite subscribers are provided a 3G-or-better SIM card, which provides access to BIAS that meets the minimum service speed standard. Over 72 percent of Telrite subscribers have a smartphone, and only these subscribers have been provided with a plan that relies primarily on Premium Wi-Fi service to meet the minimum service standards.⁶ Of the minority of subscribers with a feature phone—including Blackberry-style phones with large screens, QWERTY keyboards, and access to social media applications—all are provided 500 MB of cellular data and have access to a browser that can access all or substantially all Internet

operations. See *Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, *Petition for Rulemaking*, (filed May 13, 2013) (2013 TracFone Petition). Notwithstanding its advocacy (or perhaps underscoring the disingenuous nature of it), TracFone itself uses in-person enrollment and hand-set distribution, as well as commission-based agents.

⁴ TracFone Reply at 2 (asking the Commission to “clarify that reliance on Wi-Fi and feature phones meets neither the letter nor the intent of the Commission’s minimum standards”), 3 (claiming that “only Telrite had the temerity to assert that 3G feature phones and reliance on Wi-Fi . . . are sufficient to meet the Commission’s mobile BIAS minimum standard”), 11 (arguing that “the Commission never intended for ETCs to provide broadband Lifeline service accessed through 3G feature phones and relying on other providers’ Wi-Fi hotspots” to meet the minimum service standards).

⁵ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order).

⁶ TracFone does not volunteer the percentage of smartphones in its Lifeline customer base—likely because it is tiny.

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endpoints (or the functional equivalent).⁷ All feature phone subscribers may upgrade their handset to a smartphone for free.⁸ Any subscriber that has remained on a feature phone has had the opportunity to request a free upgrade to a smartphone after 180 days. As such, it is false to claim, as TracFone does, that Telrite's plans rely on both 3G feature phones *and* Premium Wi-Fi to meet the minimum service standards. All Telrite subscribers either have a smartphone and a plan with both Premium Wi-Fi service and cellular data, or have a feature phone with 500 MB of cellular data. In *both* cases, the service plan meets the mobile BIAS minimum service standards.

Second, TracFone misrepresents the Commission's handset rules and Telrite's offerings. In TracFone's alternate reality, the Lifeline rules not only require an ETC to provide each subscriber with a smartphone, but also impose particular product specifications, including large screen size, data storage capacity, video capabilities, and the ability to download "millions" of apps. While Telrite's devices typically meet these aspirational standards, the Commission's Lifeline rules impose no such requirements. The Lifeline Modernization Order did not require ETCs to provide smartphones, and only requires that if an ETC provides a consumer with handsets, the handset must be Wi-Fi enabled and some percentage of the ETC's handsets must be hotspot capable. There is no suggestion in the rules that if the ETC does not provide a handset, is it not providing mobile BIAS. Telrite's offerings meet the standards that the Commission has set forth, and if TracFone would like to refresh its request that the Commission to impose new handset requirements, the appropriate venue is a petition for rulemaking, not a request for clarification.

Third, TracFone misstates the law with respect to mobile BIAS and Telrite's Premium Wi-Fi service. In its reply comments, TracFone concedes two major points. First, TracFone agrees that Wi-Fi enabled broadband is BIAS.⁹ Second, TracFone concedes that the consumer's device is a mobile station.¹⁰ As such, TracFone both agrees that Telrite's Premium Wi-Fi service is BIAS and that the devices that Telrite's subscribers primarily use to access its Premium Wi-Fi service are "mobile stations," meeting the letter of the "mobile BIAS" definition.¹¹ Rather than

⁷ TracFone does not volunteer information on its embedded base of feature phones—likely because it did not invest in more sophisticated handsets and provided its Lifeline subscribers with cheap handsets that have very limited functionality.

⁸ TracFone does not volunteer its free smartphone upgrade program—likely because it doesn't have one.

⁹ See TracFone Reply at i, 9 (noting that "[t]here are important differences between fixed broadband, including Wi-Fi, on the one hand, and mobile broadband, on the other hand.").

¹⁰ See TracFone Reply at 7 (explaining that "the definition of mobile BIAS assumes that the *device* will be moving while being used") (emphasis added).

¹¹ While the rules support a finding that Telrite's Premium Wi-Fi service is mobile BIAS, it also meets the definition of fixed BIAS because it utilizes fixed BIAS access points. As such, if the service plan meets the fixed BIAS minimum service standards of at least 150 GB of data and advertised speeds of 10/1 Mbps, it would qualify for the 12-month benefit port freeze. As Telrite

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concede that Telrite's Premium Wi-Fi service is mobile BIAS, however, TracFone erroneously argues that mobile BIAS service "must enable a customer to seamlessly and continuously have access to the Internet at all location points."¹² Relying on this fictional requirement, TracFone suggests Telrite's Premium Wi-Fi service is not a mobile service because of the "limited geographic range of Wi-Fi routers" and because there are "no assurances that a consumer's mobile device will remain connected to the Internet as the consumer moves out of the coverage area of a hotspot."¹³ As Telrite argued in its reply comments, there is no requirement that a service must provide such geographically ubiquitous access to the Internet. Indeed, it would be difficult for even cellular BIAS to meet that standard, especially in rural areas or in areas where terrain or physical barriers prevent "seamless and continuous" connectivity.¹⁴ Moreover, TracFone fails to distinguish between traditional, public Wi-Fi service—one or a small number of access points offered to consumers for free as an ancillary benefit to some other business (e.g., a hotel or coffee shop)—and Telrite's Premium Wi-Fi service, which involves the resale of a *network* of millions of access points and SmartConnect technology designed to permit automatic hops between the strongest nearby access points while a subscriber is on the move. Thus, the issue is not whether Wi-Fi is mobile BIAS, but rather whether a nationwide network built on resold broadband access points over unlicensed spectrum, and intended for use with smartphones, is mobile BIAS. On that latter question, the answer is yes. As stated above, Telrite's Premium Wi-Fi service is BIAS and relies primarily on mobile stations—smartphones—and therefore meets the definition of mobile BIAS.

Fourth, TracFone fails to provide compelling evidence that Telrite's Premium Wi-Fi service is not available or is not meeting consumer expectations, and ignores contrary evidence. TracFone provides no evidence that "[f]ew" iPass access points "are located in low-income residential areas and are unlikely to be of use to Lifeline customers."¹⁵ The marketing materials that TracFone cites are geared toward business travelers and enterprise customers, rather than consumers (Telrite is iPass's first consumer-focused reseller), and so the fact that those

has argued, its Premium Wi-Fi service provides unlimited data each month and can support speeds that meet or exceed the fixed BIAS speed standard.

¹² See TracFone Reply at 7.

¹³ See *id.*

¹⁴ As for the limited range of Wi-Fi routers, similar observations could be made about today's femtocells, which have "limited geographic range" of only a few meters and provide no assurance that a consumer will "remain connected to the Internet" when it moves out of range. However, it would be bizarre—and incorrect—to suggest that a data service connecting through femtocells and other small cells is not mobile BIAS, even where there are gaps in coverage. Moreover, TracFone appears to assume that technology will remain static. Of course, this assumption likely is faulty as improvements in technology used to leverage unlicensed spectrum have been coming at a rapid pace.

¹⁵ See TracFone Reply at 7.

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materials reference hotels, convention centers, and airports should be expected.¹⁶ Moreover, the only low-income ZIP Code that TracFone submits to support its argument is a Florida ZIP code in which Telrite has no Lifeline subscribers. Further, TracFone ignores the fact that iPass relies on residential broadband connections through partnerships with national and regional broadband providers, providing BIAS that includes millions of homes. TracFone also fails to provide evidence of widespread consumer dissatisfaction with Premium Wi-Fi service. Indeed, the sole subscriber who has formally complained about Telrite's broadband service is a smartphone customer *who also receives 500 MB of cellular data*. In addition, TracFone ignores the steps that Telrite took to responsibly notify and educate its subscribers about its new Premium-Wi-Fi-enabled offering, including a text message and online notice that explicitly mentioned the new offering and the port freeze.

Fifth, TracFone and its misguided group of civil society supporters misconstrue the purpose of the benefit port freeze and advance a proposal that would constrain consumer choice and innovation in the Lifeline program. TracFone's reply comments suggest that "leading consumer groups" "articulate consumer interests, including those of low-income Lifeline customers."¹⁷ However, the civil rights and public interest organizations who typically represent the interests of consumers in this docket—including National Consumer Law Center, Free Press, Public Knowledge, the United Church of Christ-OC, and the National Hispanic Media Coalition, and many others—have not filed in support of TracFone's request. Instead, the few commenters who filed in response to TracFone's request ask the Commission to "stop the abuse" of the benefit port freeze, which they argue "is being used to limit consumer choice and access to true broadband service and broadband-suitable devices."¹⁸ As though written from a script provided by TracFone, these claims are neither representative nor factually accurate. By providing a new, innovative service offering, Telrite is not abusing the benefit port freeze, but rather is demonstrating its benefits. Telrite's service provides consumers with an additional choice in the marketplace—they can select traditional cellular data plans with limited data or they can choose Telrite's hybrid service that includes both its unlimited Premium Wi-Fi service and cellular data. Consumers that select Premium Wi-Fi service have demonstrated that the service is more "meaningful" to them, a subjective determination based on their own unique needs. Moreover, these commenters miss the

¹⁶ See TracFone Reply at 7 n.12.

¹⁷ See TracFone Reply at i, 3. Note that the "leading consumer groups" supporting TracFone's position are those same few that have supported other anti-competitive TracFone proposals; *see, e.g.*, Letter from Ken McEldowney, Consumer Action, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42, 2 (June 17, 2013) (supporting TracFone's call to ban in-person handset distribution).

¹⁸ Letter from Ken McEldowney, Consumer Action, and Sally Greenberg, National Consumers League, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 2, 2017).

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point: the benefit port freeze was intended to reduce flipping among existing Lifeline subscribers, and the decrease in porting reflects the intended policy outcome. The fact is, 70 percent of the Lifeline market remains unaddressed,¹⁹ and TracFone and its agents remain free to enroll those subscribers, rather than poaching from other ETCs and undermining Commission policy. Further, as explained in more detail below, subscribers always have the option to change service before the 12-month deadline, for example, by switching to a voice plan. In this way, no consumer is “locked up,” and all consumers now have the ability to choose between a traditional, limited cellular data plan and a new, innovative offering in the marketplace that offers unlimited mobile data. To limit mobile BIAS to licensed, cellular data, as TracFone would have it, or to facilities-based operators, as Sprint would have it,²⁰ would only limit consumer choice and innovation in a manner that would widen the digital divide.

Sixth, TracFone’s gambit appears to reflect not a legitimate regulatory concern, but rather an attempt to suppress competition in favor of its preferred business model.

TracFone’s offerings, when compared to Telrite’s, are inferior. For example, in states with a \$9.25 subsidy, TracFone only offers consumers 350 minutes of voice service compared to Telrite’s 500 minutes, and only 500 MB of traditional cellular data compared to Telrite’s data service with unlimited Premium Wi-Fi service and 10 MB of traditional cellular data.²¹ As a result, to the average consumer, Telrite provides significantly more value for the Lifeline benefit than TracFone. It’s no surprise, then, that TracFone has rushed once again to the Commission rather than increase its offerings, just as it did with its repeated calls to ban in-person handset distribution and commission-based agent compensation.²² The Commission should not fall for TracFone’s latest attempt to beat back competition and innovation with regulation.

Seventh, TracFone’s call for enforcement is misdirected and relies on a fundamental misunderstanding about the mechanics of the 12-month benefit port freeze and Telrite’s own practices. The central purpose of the 12-month benefit port freeze is to stabilize the customer-carrier relationship to incentivize ETCs to provide consumers with broadband, innovative service

¹⁹ See Letter from Michelle Garber, Vice President, Lifeline Division, Universal Service Administrative Company, to Ryan Palmer, Chief, Telecommunications Access Policy Division, Federal Communications Commission, WC Docket No. 11-42, Attachment at 5 (Feb. 24, 2016); see also *#Solutions2020 Call to Action Plan – FINAL*, Public Notice, 3 (Mar. 27, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0327/DOC-344081A1.pdf.

²⁰ See Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42, et al. at 1 (Feb. 15, 2017).

²¹ Compare Life Wireless Plans, <https://www.lifewireless.com/main/plans> with TracFone Plans, https://www.safelinkca.com/TracFoneWeb/en/index2.html#.

²² See generally 2013 TracFone Petition.

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offerings, and, to the extent they are provided, better devices such as smartphones. Much to the chagrin of TracFone and its highly compensated agents, the rule is working as intended.²³ As Telrite explained at length in its advocacy on this issue, its broadband offering is both made possible by the 12-month benefit port freeze and advances the goals of innovation and consumer choice in the Lifeline program.²⁴ These plans provide, at no cost to the consumer, 500 minutes of voice, unlimited text messages, cellular data, and unlimited Premium Wi-Fi service, an offering that as a whole provides significant consumer value. As such, TracFone is wrong to suggest that Telrite is “gaming the system” or attempting to “lock up” customers into “second-class” plans that do not meet their needs.²⁵ Indeed, after Telrite notified subscribers about their service upgrade to Premium Wi-Fi and the 12-month benefit port freeze, nearly all retained their service with Telrite. Moreover, if any consumer believes that they were not obtaining the level of service that they expected, he or she can request to switch to a voice-only plan and take advantage of the 60-day benefit port freeze. As such, no subscriber is locked in to his or her service and all retain the ability to switch providers. For these reasons, TracFone’s call for enforcement is yet another unfounded attempt to use the regulatory process to gain competitive advantage.

Pursuant to section 1.1206(b) of the Commission’s rules, this letter is being filed electronically.

Respectfully submitted,



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²³ TracFone pays its agents approximately double the average Commission paid to agents by most Lifeline ETCs. Rather than organize and run their own community-outreach events, TracFone’s agents tend to prey on those set up by other ETCs.

²⁴ See Telrite Reply at 6.

²⁵ See TracFone Reply at 12.

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